

**BEFORE THE HARYANA REAL ESTATE REGULATORY
AUTHORITY, GURUGRAM**

Complaint no. : 125 of 2018
First date of hearing: 08.05.2018
Date of decision : 27.11.2018

Deepesh Sharma
C/o Dushyant Sood, C1-302, The Legend,
Sector 57 Gurgaon-122002

Complainant

Versus

1. M/s Universal Buildwell Pvt. Ltd,
8th floor, Sector 49, Sohna Road,
Gurugram -122001
2. Shiv Ganesh Buildcon Pvt. Ltd.
102, Antriksh Bhawan, 22 Kasturba Gandhi
Marg, New Delhi 110001

Respondents

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Subhash Chander Kush

Chairman
Member
Member

APPEARANCE:

Shri Bhupender Pratap Singh Advocate for the complainant
Respondent proceeded Advocate for the respondents
ex parte

ORDER

1. A complaint was filed under section 31 of the Real Estate (Regulation And Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation And Development) Rules, 2017 by the complainant Mr. Deepesh Sharma, against



the promotor M/s Universal Buildwell Pvt. Limited and Shiv Ganesh Buildcon Pvt. Ltd., on account of violation of the clause 13.3 of the apartment buyer's agreement executed on 17.10.2011 in respect of apartment number 1202, 12th floor, block/tower I in the project 'universal aura' for not handing over possession by the due date i.e. 17.04.2015 which is an obligation of the promoter(s) under section 11(4)(a) of the Act *ibid*.

2. The particulars of the complaint case are as under: -

1.	Name and location of the project	Universal Aura, sector 82, Gurugram
2.	Apartment/unit no.	I-1202, 12 th floor
3.	DTCP license	51 of 2011
4.	Flat measuring	Revised 1824 sq. ft. of super area
5.	RERA registered/ not registered	Not registered
6.	Date of booking	11.11.2010
7.	Date of execution of apartment buyer's agreement	17.10.2011
8.	Payment plan	Construction linked payment plan
9.	Revised total consideration	Rs.70,88,292/-
10.	Total amount paid by the complainant till date	Rs. 58,26,514/-
11.	Date of delivery of possession as per clause 13.3 of apartment buyer's agreement (36 Months from the date of approval of the building plans and/or execution of agreement whichever is later+ 180 days grace period) Computing due date of possession from date of	17.04.2015



	execution of agreement as date of approval of building plan is not available.	
12.	Delay in handing over possession till date	3 years 8 months
13.	Penalty clause as per apartment buyer's agreement	Clause 13.4 of the agreement i.e. Rs.10/- per sq. ft per month of the super area of the said flat.

3. The details provided above have been checked as per the record available in the case file which have been provided by the complainant and the respondent. An apartment buyer's agreement is available on record for the aforesaid apartment according to which the possession of the same was to be delivered by 17.04.2015. Neither the respondent has delivered the possession of the said unit till now to the purchaser nor they have paid any compensation @ Rs.10/- per sq. ft per month of the super area of the said flat for the period of such delay as per clause 13.4 of apartment buyer's agreement dated 17.10.2011. Therefore, the promoter has not fulfilled his committed liability as on date.

4. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and appearance. The respondent filed an reply appeared on 25.05.2018. The case came up for hearing on 08.05.2018, 06.06.2018, 11.07.2018,



21.08.2018, 27.09.2018, 22.10.2018 and 27.11.2018. The reply filed on behalf of the respondent has been perused.

Facts of the complaint

5. Briefly stated, the facts of the case as culled out from the case of complainant, are as follows. The complainant booked a unit no. 1-1202 on 12th floor, measuring 1587 sq. ft. situated at “Universal Aura” at Sector 82, Gurugram dated 11.11.2010.
6. The complainant submits that the respondent no.1 is a company incorporated under the Companies Act 1956 and is the real estate developer for the project. All monies were demanded by and paid to respondent no.1 by the complainant. Also, the respondent no. 2 is a private limited company incorporated under the Companies Act 1956 and is the holder of the development license no. 51 of 2011 for the said project. The said development license was granted to respondent no. 2 on 5.06.2011.
7. The complainant submitted that at the time of the booking respondent no.1 falsely represented to the complainant that it had requisite license for the project and all approvals from the departments of town and country planning and other departments and that the apartment will be delivered within 3 years of booking. However, it transpired that the



development license itself was not granted to respondent no.2 until 5.06.2011 i.e. until 7 months after respondent no.1 took the booking from the complainant and had collected Rs. 9,83,882/-towards the consideration of the said apartment. Respondent no.1 thus collected the money without the development license even being granted by the competent authority. Furthermore, it transpire that the respondent has failed to renew the development licence after 04.06.2015. True copy of the printout from the web site of the Department of Town & Country Planning, Haryana has been annexed to the complaint.

8. The complainant submitted that the builder buyer agreement was executed on 17.10.2011 i.e. one year after booking and after a sum of Rs.9,83,882/- had been collected by respondent no.1. As per clause 13.3 of the said agreement provides for a 36 month period for handover plus 180 days is provided for handing over possession. This expired on 17.04.2015 and the construction at the site was nowhere near complete.

9. The complainant submitted that the initial allotment of the apartment was jointly in the name of the complainant and another allottee, Mr. Dushyant Sood. The said allotment was



transferred solely in the name of the complainant vide letter dated 7.11.2012.

10. That vide letter dated 10.12.2013 respondent no.1 claimed that the super area of the apartment had increased by 237.76 sq.ft. to 1824.76 sq. ft., not substantiating the said increase with any supporting documentation. With the said increase in area, respondent no.1 unilaterally increased the total consideration for the apartment from Rs. 63,73,857/- to Rs. 70,88,292/-.
11. The complainant submitted that for the last 4 years there has been no progress on site. Also, for two years after booking on 11.11.2010 there was no movement in construction on site. This clearly indicates no commitment on the part of respondent no.1 and respondent no.2 to deliver what they promised to the complainant.
12. The complainant submitted that he wrote an email dated 22.07.2017 to the company including its directors, Vikram Puri and Varun Puri inquiring about the status of construction for the project and the compensation for delay. Till date, no reply has been given by the company to the said communication.



13. Issues raised by the complainants are as follow:

- i. Whether the respondents acted in violation of the provisions of the act by selling an apartment to the complainant and demanding and accepting payments without first securing the development license for the project.
- ii. Whether there is inordinate delay by the respondents in handing over the apartment to the complainant.
- iii. Whether the respondents sought the approval of the complainant before allegedly increasing the area and demanding extra monies for the same.
- iv. Whether the complainant is entitled to refund of monies along with interest and compensation in light of the aforesaid submissions.

14. Relief sought:

The complainant is seeking the following relief:

- i. Direct the respondent to refund the monies with interest at 18 % of the monies paid by complainant for being subjected to an inordinate delay in possession by the respondents.



- ii. Award pendent lite and future interest at the rate of 12 % per annum on sums awarded by this authority to the complainant.

Respondent's reply

The respondents made application for rejection of complaint on the ground of jurisdiction .

15. The respondent submitted the complaint filed by the complainant is not maintainable and this hon'ble authority has no jurisdiction to entertain the present complaint.
16. The complaint for compensation and interest under section 12,14, 18, and 19 of the Real Estate (Regulation &Development) Act, 2016 is maintainable only before the adjudicating officer under rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 read with section 31 and section 71 of the said act not under rule-28.
17. That the complaint does not disclose any real cause of action and the complainant has filed the present complaint only to harass and to extort money from the respondent builder and gain wrongfully.
18. The respondent submitted that the complainant has failed to discharge his obligations and therefore, the complainant is by



his own acts and conduct stopped from filling the present complaint.

19. That the respondent company is committed to develop the real estate project named Universal Aura Sector 82 Gurgaon and the construction work is going on. Though the said project is going behind schedule of delivery, however the respondent has throughout conducted the business in a bonfide manner and the delay occasioned has been beyond the control of the respondent and due to multifarious reasons. That there had been labour and material shortages affecting the time schedule and further, various allottees have made defaults in making timely payments that has constrained the financial capacity of promoter and disrupted the completion of the project within the time prescribed.
20. That though the complete real estate sector is under pressure of delivery yet, availability of skilled manpower and material is at an all-time low. On the other hand, even, the respondent company due to uncontrollable delay in delivering the project is suffering because it has had to pay the huge amount of money as well as for license fees for renewal of the same. Also, that the price of the flats in the project had already been fixed in the year 2010-2011 as per policy on the basis of estimated costs but the costs of men and material have also



increased manifold and the respondent company is suffering immense loss of margins due to the delay so occasioned without there being any compensation to the respondent company. The respondent company had to pay higher renewal charges as per the higher EDC charges in spite of the uncontrollable delays.

21. That this honourable forum does not have the subject matter jurisdiction as the respondent have not violated or contravene any of the provision of Real Estate Act.
22. That the present case requires detailed investigation and leading of evidence and the same cannot be adjudicated in summary manner, therefore this honourable form lacks jurisdiction in the present complaint.
23. Further it is submitted that the intention of the complainant in filing the present complaint for the sole purpose of extorting money and the complainant has levied baseless allegation on the respondent.
24. That due to the delay in the project occasioned because of factors beyond the control of the respondent company amounting to force majeure conditions, the complainant is not suffering any losses worth compensating for, rather it is



the respondent company who is suffering as it is unable to complete the project within the specified time limit.

25. That it is submitted that the complainant out of his free will and accord and after verification purchased the flat the unit no. I-1202, 12th floor of universal aura sector 82 Gurgaon.

26. That the respondent has not committed deficiency in services or unfair trade practice, in any manner whatsoever as alleged. That the present complaint is an abuse of the process of law. Complainant has out of their own free will and volition and upon being satisfied with all terms and conditions of the application. It is submitted that the complainant now maliciously with ulterior motives, deliberately trying to wriggle out of obligations derived from the terms of allotment letter and on this sole ground alone the present complaint is liable to be dismissed.

27. The respondents have denied the other allegations made by the complainant.

28. **Determination of Issues**

After considering the facts submitted by the complainant, reply by the respondent and perusal of record on file, the authority decides seriatim the issues raised by the parties as under:



- i. With respect to the **first issue** raised by the complainant, the respondent be directed to reply on affidavit the details regarding receipt of development licence and date of renewal for the same.
- ii. With respect to **second issue** raised by the complainant, the authority decides that as per clause 13.3 of apartment buyer's agreement, the possession of the flat was to be handed over within 36 months from the date of approval of the building plans and/or execution of agreement whichever is later+ 180 days grace period. Therefore, the due date of handing over possession is 17.04.2015. The clause regarding the possession of the said apartment is reproduced below:

"13.3 offer of possession

...the Company proposes to handover the possession of the said flat within a period of thirty-six (36) Months from the date of approval of the Building Plans and/ or execution of the Apartment Buyer Agreement whichever is later and subject to terms and conditions and limitations mentioned in the Apartment Buyer Agreement("Commitment Period"). The Allottee further agrees and understands that the company be shall additionally be entitled to a period of 180 days after the expiry of the said Commitment period to allow for, unforeseen delays in obtaining the occupation certificate etc, from DTCP under the act, in respect of the project."



Accordingly, there has been delay of 3 years 8 months in handing over the possession. As far as the penalty clause in case of delay in possession is concerned, it stipulates a penalty of which is Rs. 10/sq. ft. of the super area per month.

- iii. Regarding **third issue** raised by the complainant, that as per clause 10.3 of apartment buyer's agreement, regarding the increase in area of the said apartment is reproduced below:

"10.3 variation in size

.....that there is any change in the said Apartment's location or variation in its size to the extent of +-15 % at the time of final measurement(as contemplated hereinafter), the applicable Sale consideration, shall either be payable or refundable, as the case may be, proportionately at the rate agreed herein, without any interest thereon...."

Accordingly, the promoter is within its contractual right to vary the super area of the flat within a range of 15 % and the super area of said apartment has been increased by 13%. Therefore, such increase in super area is justified by the respondent.

- iv. In regarding the **fourth issue** raised by the complainant, respondent is liable to pay delayed interest under section 18(1) proviso to pay to the complainant interest, at the



prescribed rate of 10.75%, for every month of delay till the handing over of possession. The complainants can seek compensation from the adjudicating officer under the RERA Act. The promoter is liable under section 18(1) proviso which is reproduced below:

“18.(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,— (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

The complainant reserves his right to seek compensation from the promoter for which he shall make separate application to the adjudicating officer, if required.

The complainant has sought refund of the amount paid by them along with interest @18% p.a. and intend to withdraw from the project. However, keeping in view the present status



of the project and intervening circumstances, the authority is of the view that in case refund is allowed in the present complaint, it shall hamper the completion of the project. The refund of deposited amount will also have adverse effect on the other allottees. As per proviso to section 18(1) of the Act, if the complainant does not intend to withdraw from the project, he shall be paid interest for every month of delay till the handing over of the possession.

29. The due date of possession was 17.04.2015. The delay compensation payable by the respondent @ Rs.10/- per sq. ft. per month of the carpet area of the said flat as per clause 13.3 of apartment buyer's agreement is held to be very nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and ors. (W.P 2737 of 2017)**, wherein the Bombay HC bench held that:

"...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance



to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements.”

30. As the possession of the flat was to be delivered by 17.04.2015 as per the clause referred above, the authority is of the view that the promoter has failed to fulfil his obligation under section 11(4)(a) of the Haryana Real Estate (Regulation and Development) Act, 2016, which is reproduced as under:

“11.4 The promoter shall—

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be: Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.”

31. The complainant made a submission before the authority under section 34 (f) to ensure compliance/obligations cast upon the promoter as mentioned above.

34 (f) Function of Authority –



To ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

The complainant requested that necessary directions be issued by the authority under section 37 of the act ibid to the promoter to comply with the provisions and fulfil obligation which is reproduced below:

37. Powers of Authority to issue directions

The Authority may, for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, issue such directions from time to time, to the promoters or allottees or real estate agents, as the case may be, as it may consider necessary and such directions shall be binding on all concerned.

Findings and directions of authority

32. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.



33. The authority has decided to take suo-motu cognizance against the said promoter for not getting the project registered and for that separate proceeding will be initiated against the respondent u/s 59 of the Act.

34. The authority is view that dismal state of affairs with regard to status of the project and non-appearance of the respondent despite service, the authority is left with no option but to order refund of the amount of Rs. 58,26,514/- deposited by the complainant/buyer alongwith prescribed rate of interest i.e. 10.75% per annum.

35. After taking into consideration all the material facts as adduced and produced by both the parties, the authority exercising powers vested in it under section 37 of the Real Estate (Regulation and Development) Act, 2016 hereby issues the following direction to the respondent in the interest of justice and fair play:

- I. To refund the entire amount of Rs. 58,26,514/- paid by the complainant along with prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the



issuance of this order failing which execution proceedings shall be initiated against the respondent ipso facto.

36. The order is pronounced.

37. Case file be consigned to the registry.

(Samir Kumar)
Member

(Subhash Chander Kush)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 27.11.2018

HARERA
GURUGRAM



PROCEEDINGS OF THE DAY

Day and Date	Tuesday and 27.11.2018
Complaint No.	125/2018 case titled as Mr. Deepesh Sharma Vs. M/s Universal Buildwell Pvt. Ltd. & another
Complainant	Mr. Deepesh Sharma
Represented through	Shri Bhupender Pratap Singh Advocate for the complainant.
Respondent	M/s Universal Buildwell Pvt. Ltd. Trade Tower, 8 th Floor, Sector-49, Sohna Road, Gurugram, Haryana and another
Respondent Represented through	Respondent proceeded exparte vide order dated 22.10.2018
Last date of hearing	22.10.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

Proceedings

Arguments heard.

Case of the complainant is that he had booked a apartment No.I-1202, Tower-I, 12th floor, "Universal Aura" Sector 82, Gurugram with the respondent and Apartment Buyer Agreement to this effect inter-se the parties was executed on 17.10.2011. As per clause 13 (3) of the BBA, the possession of booked apartment was to be delivered within a period of 36 months + 6 months grace period which comes out to be 17.4.2015. It was a construction linked plan. Complainant/buyer has already paid an amount of Rs.58,26,514/- to the respondent. However, respondent has failed in fulfilling

his obligation as on date to deliver the possession of the unit to the complainant.

On the previous date of hearing i.e. 22.10.2018, none was present on behalf of the respondent and the respondent was ordered to be proceeded against *exparte* and case was finally adjourned for final arguments on 27.11.2018.

Keeping in view the dismal state of affairs with regard to status of the project and non-appearance of the respondent despite service, the authority is left with no option but to order refund of the amount of Rs. 58,26,514/- deposited by the complainant/buyer alongwith prescribed rate of interest i.e. 10.75% per annum.

Accordingly, it is directed that the respondent to refund the entire amount of Rs. 58,26,514/- paid by the complainant alongwith prescribed rate of interest i.e. 10.75% per annum within a period of 90 days from the issuance of this order failing which execution proceedings shall be initiated against the respondent *ipso facto*.

Complaint is disposed of. Detailed order will follow. File be consigned to the registry.

Samir Kumar
(Member)
27.11.2018

Subhash Chander Kush
(Member)
27.11.2018